

Message Text

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FEAE-00 OES-06 IGA-02 JUSE-00 AID-05 SS-15 SP-02

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L:MBFELDMAN (SUB)

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FM SECSTATE WASHDC

TO AMEMBASSY CARACAS IMMEDIATE

C O N F I D E N T I A L STATE 089873

E.O. 11652: GDS

TAGS: EINV, PFOR, VE

SUBJECT: OCCIDENTAL PETROLEUM BRIBERY CASE

REF: CARACAS 3835

1. DEPT IS EXTREMELY CONCERNED BY BICAMERAL CONGRESSIONAL COMMITTEE'S RECOMMENDATION THAT GOV NOT PAY OCCIDENTAL ANY COMPENSATION FOR NATIONALIZATION OF ITS PROPERTIES. RECOMMENDATION IS INCONSISTENT WITH OBLIGATION OF EXPROPRIATING NATIONS UNDER INTERNATIONAL LAW TO PROVIDE PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION. WE ALSO VIEW AS ALARMING, GIVEN GOV'S ACTION IN NIEHOUS MATTER, APPARENT PROCLIVITY OF GOV TO USE EXPROPRIATION/CONFISCATION AS A GENERAL CRIMINAL SANCTION, WHICH IS NOT CONSISTENT WITH VENEZUELAN LET ALONE INTERNATIONAL LAW. WE ;
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BELIEVE THAT WE SHOULD BRING OUR VIEWS ON THIS MATTER

TO ATTENTION OF GOV BEFORE IT TAKES ANY POSITION ON
RECOMMENDATIONS OF COMMITTEE.

2. RECOMMEND EMBASSY TAKE ADVANTAGE OF OPPORTUNITIES THAT
MAY ARISE TO CONVEY OUR VIEWS TO APPROPRIATE HIGH LEVEL GOV
OFFICIALS ALONG FOLLOWING LINES:

A. REVELATIONS OF CORRUPT PRACTICES BY US FIRMS ABROAD
HAVE GIVEN THE USG GREAT CONCERN. AS WE HAVE REPEATEDLY
EMPHASIZED, THE USG CANNOT CONDONE ILLEGAL OR IMPROPER
ACTIVITIES BY AMERICAN COMPANIES. WE SUPPORT THE IMPOSI-
TION OF PENALTIES PROVIDED FOR UNDER LOCAL LAW IN CASES
WHERE, AFTER A FAIR AND IMPARTIAL JUDICIAL PROCEEDING, US
COMPANIES OPERATING OVERSEAS ARE FOUND TO HAVE COMMITTED
ILLEGAL ACTS. AT THE SAME TIME, WE DO NOT BELIEVE THAT
EXTRAORDINARY MEASURES OF ECONOMIC RETALIATION, WHICH BY-
PASS THE JUDICIAL PROCEDURES AND PENALTIES PRESCRIBED BY
LAW, ARE AN APPROPRIATE RESPONSE.

B. IN THE CASE OF OCCIDENTAL, WHILE THE USG CONSIDERS THE
CONGRESSIONAL INVESTIGATION OF ALLEGED ILLEGAL ACTIVITIES
BY OCCIDENTAL ENTIRELY APPROPRIATE, WE ARE CONCERNED BY
THE COMMITTEE RECOMMENDATION THAT GOV NOT PAY OCCIDENTAL
COMPENSATION FOR NATIONALIZED PROPERTIES. CONFISCATION IS
NOT RECOGNIZED AS A GENERAL CRIMINAL SANCTION UNDER
VENEZUELAN OR INTERNATIONAL LAW. THE GOV NATIONALIZED
OCCIDENTAL FOR REASONS UNRELATED TO ANY ALLEGATIONS OF
BRIBERY, AND THE TWO MATTERS SHOULD BE TREATED SEPARATELY,
EACH ON ITS OWN MERITS. AN EXTRAORDINARY PENALTY NOT
FOUNDED IN LAW WOULD BE PARTICULARLY INAPPROPRIATE SINCE
THE COMMITTEE HAS APPARENTLY FOUND THAT THE ALLEGED
BRIBERY DID NOT AFFECT IN ANY WAY THE DECISIONS OF THE
GOV.

C. THE USG BELIEVES THAT APPROPRIATE MEASURES CAN BE
DEVELOPED TO DEAL EFFECTIVELY WITH CORRUPT PRACTICES.
THUS, AT THE SECOND SESSION OF THE UN COMMISSION ON
TRANSNATIONAL CORPORATIONS IN LIMA, THE US DELEGATION
PROPOSED A MULTILATERAL AGREEMENT ON CORRUPT PRACTICES.
IN ADDITION, WE HAVE BEEN TRYING TO DEVELOP A PROCEDURE
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THAT WOULD FACILITATE THE EXCHANGE OF INFORMATION WITH
INTERESTED GOVERNMENTS. WE WILL SOON BE IN TOUCH WITH
YOUR GOVERNMENT ON THIS SUBJECT.

D. WE HOPE THAT THE GOV SHARES OUR VIEW THAT ILLEGAL AND
IMPROPER PRACTICES CAN BE DEALT WITH EFFECTIVELY CONSIS-
TENT WITH INTERNATIONAL LAW THROUGH INTERNATIONAL COOPER-
ATION AND THE APPLICATION OF PERTINENT LOCAL LAW. WE

BELIEVE IT WOULD BE MOST CONSTRUCTIVE FOR THE GOV TO PUR-
SUE ANY EVIDENCE OF ALLEGED BRIBERY BY OCCIDENTAL IN THIS
LIGHT. EFFORTS TO DEAL WITH THIS SERIOUS PROBLEM WILL NOT
BE ADVANCED BY THE ABANDONMENT OF NORMAL JUDICIAL PRO-
CEDURES OR BY CONFUSING THE ISSUE WITH THAT OF
NATIONALIZATION. KISSINGER

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